Forgiveness and mercy

JEFFRIE G. MURPHY
ARIZONA STATE UNIVERSITY
and
JEAN HAMPTON

CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge CB2 1RP, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK http: //www.cup.cam.ac.uk
40 West 20th Street, New York, NY 10011-4211, USA http: //www.cup.org
10 Stamford Road, Oakleigh, Melbourne 3166, Australia

First published 1988
First paperback edition 1990
Reprinted 1994, 1998

Printed in the United States of America

Typeset in Palatino

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing-in-Publication Data is available

ISBN 0-521-39567-4 paperback

Contents

Introduction

I. THE RETRIBUTIVE EMOTIONS

Jeffrie Murphy

> Whoever has done me harm must suffer harm; whoever has put out my eye must lose an eye; and whoever has killed must die. This is an emotion, and a particularly violent one, and not a principle. . . . Retaliation does no more than ratify and confer the status of law on [this] pure impulse of nature.
>
> Albert Camus, "Reflections on the Guillotine"

The critical legal studies movement has, in my judgment, raised at least one important issue for jurisprudence and moral philosophy. I am thinking of its claim that traditional moralistic jurisprudence errs in confining its inquiries to formal, abstract, and public doctrines and to the intellectual rationales for those doctrines. According to the "crits," a full philosophical grasp of law and morality requires an examination of the underlying causal forces that in part generate both the doctrines and the intellectual rationales for them. The person who seeks total enlightenment about morality and the law is invited to look, not just to the ideological superstructure, but to the underlying substructure that gives the superstructure at least a part of its point. This seems to me an invitation that those of us who practice traditional jurisprudence should accept.[1]

1 See Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Cambridge, Mass.: Harvard University Press, 1986). Unger attacks

I am particularly interested in the degree to which certain moral and legal doctrines are rooted in specific *passions* (feelings, emotions) and the degree to which a philosophical examination of those passions will have a bearing on an understanding and evaluation of the doctrines that they in part generate and for which these doctrines in part serve as rationalizations. Although not currently at the center of philosophical fashion, this type of inquiry has, of course, a venerable philosophical history. It was pursued not simply by Nietzsche, Freud, Marx, and other heroes of the critical legal studies movement, but also by such writers as Hume and Adam Smith – pursued in their case as an inquiry into "the origin of our moral sentiments." Smith, for example, believed that much of our idea of retributive justice had to be understood in terms of the passion of resentment; and it is this family of passions, in fact, that I propose to take as my object of inquiry for the present study.[2]

Speaking very generally, we may say that the criminal law (among other things that it does) institutionalizes certain feelings of anger, resentment, and even hatred that we typically (and *perhaps* properly) direct toward wrongdoers, especially if we have been *victims* of those wrongdoers. (The great symbol for such institutionalization in our literature is that of Athena making an honorable home in Athens for the Furies and thereby transforming them into the Eumenides or "the kindly ones.") In the present age, most of us do not feel comfortable talking about the criminal law in such terms, for we are inclined to think that civilized people are not given to hatred and to an anger so intense that it generates the desire for revenge – that they are not, in short, driven by what (following Westermarck) I will call the "retributive emotions."[3]

what he calls the "formalism" and "objectivism" of traditional legal and moral theory.

2 See Adam Smith, *The Theory of Moral Sentiments* (1759; Indianapolis: Liberty Press, 1982), pp. 34–8 and 67–108.

3 See Edward Westermarck, *Ethical Relativity* (London: Routledge & Kegan Paul, 1932), Chapter 3. Westermarck's work on the moral emotions – particularly the retributive emotions – is interestingly discussed

We prefer to talk high-mindedly of our reluctantly advocating punishment of criminals perhaps because social utility or justice demands it and tend to think that it is only primitives who would actually *hate* criminals and want them to suffer to appease an anger or outrage that is felt toward them. Good people are above such passions or at least they try to be. Some would even say that this is a requirement of Christianity.

It has not been this way in all ages, of course. Consider, for example, what James Fitzjames Stephen – the great Victorian judge and theorist of the criminal law – said about that branch of law and its relation to the retributive emotions. He was no doubt a devout Christian; but he could, to use the current vernacular, really "get into" hating. Though often regarding criminals as rather like noxious insects to be ground under the heel of society, Stephen did not see the punishment of such persons as having merely extermination value. The criminal law, he claimed, gives "distinct shape to the feeling of anger" and provides a "distinct satisfaction to the desire for vengeance." He wrote:

> The sentence of the law is to the moral sentiments of the public in relation to any offence what a seal is to hot wax. It converts into a permanent final judgment what might otherwise be a transient sentiment. . . . [T]he infliction of punishment by law gives definite expression and solemn ratification and justification to the hatred which is excited by the commission of the offence. . . . The forms in which deliberate anger and righteous disapprobation are expressed [in the execution of criminal justice] stand to the one set of passions in the same relation which marriage stands to [the sexual passions].[4]

Stephen's point is a simple one: Certain wrongdoers quite properly excite the resentment (anger, hatred) of all right-thinking people, and the criminal law is a civilized and effi-

in J. L. Mackie's "Morality and the Retributive Emotions," in his collection of essays *Persons and Values* (Oxford: Clarendon Press, 1985).

4 James Fitzjames Stephen, *A History of the Criminal Law of England* (London, 1883), Vol. II, pp. 81–2.

cient way in which such passions may be directed toward their proper objects, allowing victims to get legitimate revenge consistently with the maintenance of public order. This is not its only legitimate and important purpose, but it is one of them. Passions such as resentment can, of course, provoke irrational and dangerous conduct (which passions cannot?), but this is no more a reason for condemning them in principle than it would be for condemning the sexual passions. The case for the rational control and institutionalization of a passion must not, in short, be confused with a case for the utter condemnation and extinction of that passion.

The view expressed by Stephen, although it has a certain grim plausibility, bumps up against some other fairly widely held views in our culture - specifically the view that we should be moved, not merely by the hard passions of retribution, but also (or even primarily) by the softer feelings of compassion or love and that these feelings should at least temper the feelings that provoke a retributive response to wrongdoing. Such Christian virtues as forgiveness and mercy are thought to involve these soft feelings. Indeed such sentiments and virtues are sometimes taken to be characteristic of the Christian tradition and are often taken to show the moral advance that Christianity made over what ancient Greek culture had to offer - even at its best. The best of pagan culture - represented by Athena in the *Oresteia* - generally rises only to the procedural control of strict retributive justice but rarely even considers that such justice might be transcended by higher moral demands.[5] However, although the claims of compassion clearly have an important place in the Christian tradition, and with them the virtues of mercy and forgiveness, it would be a mistake to think that such concerns are unique to that tradition. Consider an example from the Jewish tradition: "Even God prays. What is His prayer? May it be My will that My love of compassion overwhelm my demand for strict justice."[6]

5 But see Aristotle's discussion of *epieikēs* (decent, equitable) at *Nicomachean Ethics*, Book V, Chapter 10.

6 Mahzhor for Yom Kippur. The Rabbinical Assembly of New York, 439;

Thus several moral and religious traditions may come together on this issue and may, under the banner of counsels of forgiveness or mercy, suggest that the resentment that is in fact built into much of our moral and legal response to wrongdoing is inappropriate – either because we should never feel it at all or because we should always be readily open to the possibility of overcoming or transcending these feelings in the pursuit of the deeper values of love and compassion.

Given an assumption that Jean Hampton and I will make throughout the book – namely, that passions are at least in part cognitive states, states of *belief* and not just feeling – it is reasonable to suppose that some of the emotional tensions described above represent *intellectual* tensions, and thus reasonable to suppose that the gap between superstructure and substructure, between doctrine and underlying passion, is not as sharp as some seem to believe.[7] Thus there are issues

from Berakhot 7a. For a discussion of the view of forgiveness expounded in the classical Jewish sources, see Louis E. Newman's "The Quality of Mercy: On the Duty to Forgive in the Judaic Tradition," *Journal of Religious Ethics*, 15 (Fall 1987), pp. 155–72. The perspective on forgiveness in the present book is in some general sense Kantian (what some have called secularized Protestantism) – a perspective that places great emphasis on the value of individual autonomy and the voluntary (often quasi-contractual) nature of moral relations. According to Newman, the Jewish perspective on forgiveness has a different basis, for "within Judaism one is not an autonomous moral agent, but a member of a covenanted community" (p. 169).

7 Emotions, unlike such simple sensations as headaches, have a cognitive structure and are thus open, at least in part, to rational evaluation and control. Consider how emotions are differentiated – how we can explain the difference between such emotions as guilt, shame, resentment, jealousy, and fear. These are all simply ways of *feeling bad*, and thus the differences between them cannot be accounted for totally in terms of how each emotion subjectively feels. What, then, is the difference? Surely it is the belief, the cognitive state, that is the essential identifying part of each emotion – guilt as involving the belief that one has done something morally wrong; shame, the belief that one has fallen short of some ideal one has of oneself; resentment, the belief that one has suffered a moral injury; jealousy, the belief that one may lose a loved object to a rival; and fear, the belief that one is in danger. Some emotions are intrinsically irrational; e.g., phobias are irrational fears in

here that will profit from being *thought through* – questions that are philosophical (and not merely causal) in nature and that require philosophical analysis and theorizing. For example: When, if ever, is hatred or anger toward wrongdoers appropriate? When, if ever, should hatred be overcome by sympathy or compassion? What are forgiveness and mercy, and to what degree do they require – both conceptually and morally – the overcoming of certain passions (hatred perhaps) and the motivation by others (compassion perhaps)? If forgiveness and mercy are indeed moral virtues, what role – if any – should they play in the *law*?

In what follows, Jean Hampton and I take up these questions. I begin, in Chapter 1, with a discussion of forgiveness and resentment, and I argue that overcoming resentment in order to forgive can sometimes be morally inappropriate. In Chapter 2, Hampton develops a discussion of the differences between hatred and resentment, offering only lukewarm support for the latter and strongly opposing at least one variant of the former. In Chapter 3, I attempt a qualified defense of a kind of hatred that I believe her discussion leaves out and that I call "retributive hatred." Hampton follows in Chapter

the sense that they are directed to an object that is not in fact dangerous or reasonably believed to be so. (Nobody would call a person "phobic" who fears a hungry and aggressive tiger in the room with him.) The relation between rationality and emotions is in other cases more complex. Sometimes a person may be judged irrational, not because the emotion he experiences is itself irrational (like a phobia), but because of the *role* he allows certain emotions to play in his life. Spinoza, for example, does not regard as irrational a person who takes prudent precautions in attempting to avoid death (e.g., a person who looks both ways before crossing a street). He does, however, characterize as deeply irrational – as in "bondage" – a person who is "led" by the fear of death to such a degree that he misses out on the joys and benefits life has to offer. For more on this, see my "Rationality and the Fear of Death," *The Monist*, 59 (April 1976), reprinted in my collection of essays *Retribution, Justice, and Therapy: Essays in the Philosophy of Law* (Dordrecht: Reidel, 1979). Also see Robert Solomon, *The Passions* (Garden City, N.Y.: Anchor/Doubleday, 1976), and William Lyons, *Emotion* (Cambridge: Cambridge University Press, 1980), for a discussion of various theories of emotion (including Spinoza's) and for a defense of a cognitive theory.

4 by admitting the existence of a retributive idea that can sometimes be a legitimate response to wrongdoing, but she denies that this idea is a part of hatred. She then commends forgiveness in different circumstances than I do and introduces the topic of mercy. In the final chapter of the book I present a sustained discussion of mercy and compassion.

Before proceeding with this substantive inquiry, however, it might be worthwhile to pause for a moment and attempt to quell the doubts of a certain kind of skeptic about the legitimacy of the whole present endeavor. Who cares, this skeptic will charge, about the emotions anyway? Let us discard this concern along with other excessively Protestant concerns with "purity of heart" and confine our attentions to what really matters – namely, the *actions* that people perform and whether those actions are permissible or impermissible, just or unjust. This, our skeptic will argue, is the true business of morality – of that part of morality, at any rate, that has any bearing on law and society.

I take this skeptic seriously because he represents the voice of one of my own previous selves. When I first began to write on forgiveness and resentment it was in response to an invitation to contribute to a volume of essays on social and political philosophy. I had spent many years writing on the topic of criminal punishment and defending a generally retributive outlook on punishment.[8] Punishment is clearly an acceptable (traditional) topic in social and political philosophy, and one who thinks about the topic of punishment – the *hard* response to wrongdoing – will at some point naturally think about such *softer* responses as excuse, mercy, and forgiveness. As I started to think about forgiveness, however, I found that I was becoming more and more interested in it as a moral virtue, and I stopped caring directly about its social, political, and legal ramifications. I thus gave the editor of the volume the opportunity to withdraw his invitation – an offer that he kindly, if not wisely, refused. Thus I was left with the

8 See my *Retribution, Justice, and Therapy: Essays in the Philosophy of Law.*

feeling that the essay was going to appear in a collection where it simply did not belong, and I began to reflect on the grounds for my disquiet.

I have come to believe that this disquiet was unjustified. Many important social practices are direct outgrowths – in institutional form – of deep human passions or emotions. As noted earlier, punishment may in part be regarded as the institutionalization of such emotions as resentment and indignation. Insofar as our social and legal practices reflect our emotions, the examination of those emotions is not out of place as a part of the body of social and political philosophy.

But the relevance of the emotions is much deeper than this. It is a limitation of the liberal tradition to think that social and political matters are restricted to concerns with how we *act* – how we treat others and what we get to do. In this tradition, the concern with social and political philosophy is simply a concern with just rules of conduct. This concern is vitally important, of course, but it no more exhausts all of social and political value than it exhausts all of moral value; and thus, in focusing exclusively on this concern, the liberal tradition leaves out something of great social and political importance, something stressed by such otherwise diverse writers as Plato, Aristotle, Aquinas, Rousseau, Marx, Freud, and Marcuse. It is this: that one legitimate concern of politics and social life is a concern with what *kind of people* will grow up and flourish. Will their personalities be rich and full and integrated (*virtuous* in Aristotle's sense), or will they be stunted and limited and alienated?

The liberal tradition tends to ignore this issue because it tends to take passions or desires as givens, and sees politics and law as being concerned with the promotion of freedom where freedom is understood simply as the ability to obtain objects of desire without external impediment.[9] But there is

9 "Liberty, or freedom, signifieth, properly, the absence of opposition; by opposition, I mean external impediments of motion. . . . [T]he liberty of man . . . consisteth in this, that he finds no stop, in doing what he has the will, desire, or inclination to do." Thomas Hobbes, *Leviathan*, Part Two, Chapter 21.

a kind of slavery – slavery of the mind or personality – that no "Bill of Rights," no guarantees of external freedom, can correct. If we are in bondage to pointless or irrational or self-destructive passions, we lack what Spinoza thought of as *freedom of the mind,* perhaps the most important kind of freedom for a human being who would hope to be truly autonomous.

We are all, to a great extent, products of whatever system of socialization is operative in our culture. If this socialization process cultivates certain irrational or destructive or self-demeaning emotions within us, we will become prisoners to those emotions – no matter how free we may think ourselves in acting upon them without impediment. Similar harm will be done if our culture seeks to extinguish emotions that are in fact healthy and valuable – a worry later to be explored with respect to resentment and hatred. Thus it must be regarded as a relevant project within social and political and legal philosophy to examine the passions or emotions (such as resentment) in order at least to attempt to deal with the question of the degree to which, if at all, these passions or emotions should be reinforced, channeled in certain directions, or even eliminated where this is possible.[10]

Even liberal John Stuart Mill came to see the importance of this issue when he wrote his *Subjection of Women;* for he saw that women were enslaved as much by their feelings of subservience as by any external impediments to their actions. And when Marx claimed that religion is the opiate of the masses, he surely meant in part to suggest that Christianity has encouraged the development of meek and forgiving dispositions that will tolerate oppression, and that will call that toleration virtue. And when novelist Fay Weldon cries out against forgiveness, her point is in part a

10 I first came to see the importance of this kind of inquiry when I read Jerome Neu's insightful exploration of the personal, moral, and social dimensions of the emotions of jealousy and envy. See his "Jealous Thoughts," in *Explaining Emotions,* ed. Amelie Oksenberg Rorty (Berkeley: University of California Press, 1980). See also his *Emotion, Thought, and Therapy* (Berkeley: University of California Press, 1977).

feminist one: that women have been taught to forgive and accept when they should have been taught to resent and resist. Thus political and social and legal philosophy *must* concern itself with the passions – their nature, their justification, their proper scope and social influence, their possible control. The present set of reflections on forgiveness and resentment may be viewed as a part of social and political philosophy so conceived.

> Marat
> these cells of the inner self
> are worse than the deepest stone dungeon
> and as long as they are locked
> all your revolution remains
> only a prison mutiny
> to be put down
> by corrupted fellow prisoners
> Peter Weiss, *Marat/Sade*

II. FORGIVENESS AND CHRISTIANITY

Jean Hampton

Jeffrie Murphy is a philosopher of law and I am a political philosopher. Hence, as his portion of this Introduction indicates, the discussions that follow are primarily informed by the theories and methodology of modern moral, political and legal philosophy. However, my interest in these topics also has a religious source, and this source provides another focus for the present book.

Like many who have been brought up in the Christian faith, I have frequently been told by clerics, Sunday school teachers and members of congregations that I must forgive those who have wronged me. One minister whom I recently heard give a sermon on the topic of forgiveness exhorted his congregation, which was to a fairly normal degree a resentful, indignant and hateful group of human beings, to engage in what he called an "orgy of forgiveness" and thereby do

their part to realize God's peaceable kingdom on this earth. The congregation was dutiful in accepting the wisdom of the minister's message and for a while tried to be nicer to one another, but underneath this niceness they did not, to any significant degree, become any less resentful, indignant or hateful. Why, I wondered, do people accept with their heads, but not believe in their hearts, the Christian message of forgiveness?

The question took on new urgency after a particularly painful series of events beset my family and plunged us into what one might call an "orgy of resentment." What struck me about the anger we felt towards those who had wronged us was that it seemed entirely appropriate and certainly not anything we wanted to give up or overcome. I began to worry that Christianity nonetheless required me to forgive those who had wronged us, which, given their actions, I was loath to do.

It seemed that I had three ways of resolving my quandary. First, I could try to have it both ways and do what the congregation did, that is, agree that I should forgive them but still sustain my anger towards them by covering it up (a strategy which might deceive others, and even myself, that I had obeyed the commandment to forgive them). Second, I could reject – or at least try to reject – these emotions, and honestly follow the commandment. Or third, I could decide to reject the commandment and keep the emotions.

The first choice wasn't a serious option; apart from its dishonesty, it was in practice impossible since my anger was too intense to hide. But which of the other two should I choose? Was it even possible to follow the second, arguably Christian course, given the grip my anger had on me? My philosophical training finally came to the forefront. I should, I thought, follow – or at least try to follow – the commandment to forgive them if, *but only if,* the commandment was right. It was while I was in this frame of mind that Murphy sent me his essay on forgiveness, and it was that essay which launched the reflections in Chapter 2 and thus precipitated this book.

What is the conclusion of that inquiry? Is the Christian

commandment right? I found myself continually coming to its defense, and becoming increasingly critical of the kinds of anger that we victims generally feel towards those who wrong us. In my view, Camus's celebration of violent retaliation in the quotation at the beginning of this introduction is dead wrong – even dangerous. Against Murphy I will argue that this response should always be eschewed both by individuals and by legal systems. Nonetheless I also found myself refusing to endorse forgiveness as a virtue in *all* circumstances, and even commending a kind of hatred which I call 'moral hatred' as sometimes morally appropriate. Congregations who refuse to follow their ministers' injunctions to forgive wrongdoers can sometimes, I argue, be right.

Some Christians may find this conclusion offensive and unchristian, but while I acknowledge that it is not a traditional answer, I do attempt to argue that it is consistent with, and perhaps even encouraged by, the words and deeds of Jesus, who is frequently an angry man, reminding one of the Old Testament prophets. I make such arguments as a philosopher, and I come to grips with the Christian teachings and texts from outside the tradition of theological reflections on these subjects. But I hope that my perspective is of some interest to theologians and others, who may be intrigued by this treatment of biblical teachings as suggestive of reasoned arguments, and by the (sometimes iconoclastic) results of doing so.

Since I offer standard philosophical arguments for my positions on forgiveness, resentment, hatred and mercy, those readers who are not Christian can ignore, if they wish, any allusions to this tradition which those arguments contain. But since the Judeo-Christian tradition has played, and continues to play, an enormous role in influencing the political and legal institutions in which these emotions and virtues are given shape, it is at least fitting, and perhaps important, that the present discussion should include exploration of some parts of that tradition which bear on how we should respond to those who wrong us. Indeed, Jeffrie Murphy, whose perspective is largely secular, found himself discussing a num-

ber of New Testament passages in the chapter on forgiveness which begins this volume.

I also think Jesus' views on forgiveness, hatred and mercy are of interest to anyone who has been badly wronged by others (and which of us on this earth hasn't?). Not only are they unusual and provocative, but they are also intended to help those who are suffering. The reader may therefore find them of some use.